



Regulatory Advisory
Prepared by Water Utility Committee
Michigan Section AWWA

**“Baseline Capacity” Issue in Question in
Implementation of New Water Withdrawal Law**

May 16, 2006

Refer to the April 24, 2006 Regulatory Advisory for a comprehensive summary of the recently enacted water withdrawal laws. This Regulatory Advisory provides information on a recent development in the implementation of the new laws.

One of MI-AWWA's significant concerns of the early versions of the proposed water withdrawal legislation was the definition of existing capacity of systems, and the potential effect on utilities' ability to use existing infrastructure. Some proposed definitions went as far as proposing the highest use in the last five years as the criteria for "baseline" or existing capacity. This could lead to the potential for a water utility to go through a permitting process in order to withdraw anything above that "baseline". In the final weeks of the negotiations on the bills that eventually were enacted into law, the definition for public water supplies was identified as "the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399,". MI-AWWA's understanding of this definition at that time was that this equated to the design capacity of one's well or intake as referenced in the original permit. However, DEQ staff have recently indicated that their interpretation of this final definition may be based on installed total (not firm) pumping capacity associated with the well or intake. For example, if an intake has 100 mgd capacity but low service pumping capacity is only 50 mgd (with plans for more in the future), the existing capacity for that system would be 50 mgd. In this example, water withdrawal permitting, including requirements for impact assessment, "consideration of conservation measures, and proving "reasonableness" of use, would apply when looking to install additional low service pumping capacity.

MI-AWWA has requested representation in the DEQ's process of rulemaking for the new laws, and will voice our concerns on this critical issue.

For more information, please contact Water Utility Committee Chair Dave Koch at (616) 459-2360 or kochds@bv.com.